

SILVER KING
COMMUNICATIONS, INC.

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May 17, 1995

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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MAY 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: MM Docket Nos. 94-149 and 91-140
Policies and Rules Regarding
Minority and Female Ownership of
Mass Media Facilities

Dear Mr. Caton:

Transmitted herewith on behalf of Silver King Communications, Inc. are an original and four copies of its Comments in the above-referenced proceeding.

If there are any questions concerning this matter, please contact the undersigned.

Sincerely,



Michael Drayer
Executive Vice President
and General Counsel

Enclosures

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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Policies and Rules Regarding)	MM Docket Nos. 94-149
Minority and Female Ownership of)	and 91-140
Mass Media Facilities)	

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

COMMENTS OF SILVER KING COMMUNICATIONS, INC.

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May 17, 1995

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SUMMARY

The Commission is seeking comment on minority incubator programs and its attribution rules as they relate to minority ownership. Silver King Communications, Inc. (“SKC”) fully supports minority incubator programs to advance minority ownership of broadcast facilities, and the Commission’s proposal to relax its attribution standards to permit the nonattribution of all other interests when a minority entity owns 50% of the voting stock of a licensee and at least 15% of the entity’s equity.

As demonstrated herein, however, SKC believes the Commission’s proposed standards for participation in the minority incubator program are too strict and must be revised to provide the necessary incentives to permit nonminorities to participate in the program in significant enough numbers for the program to make a dent in the unacceptably low level of minority involvement on the ownership side of the broadcast industry. Accordingly, SKC has proposed program guidelines that will enable the program to succeed while only rewarding nonminority participants which make substantial contributions to this longstanding Commission public policy objective. SKC also demonstrates herein that Commission concerns over undue influence by nonminority partners in minority-controlled broadcast entities, while well-intended, are misplaced, and any additional restrictions on nonminority involvement would be at cross-purposes with the Commission’s efforts to enhance minority ownership.

**Before the
FEDERAL COMMUNICATIONS, INC.
Washington, D.C. 20554**

In the Matter of:

Policies and Rules Regarding)	MM Docket Nos. 94-149
Minority and Female Ownership of)	and 91-140
Mass Media Facilities)	

To: The Commission

**COMMENTS
of
SILVER KING COMMUNICATIONS, INC.**

Silver King Communications, Inc. ("SKC") hereby submits these Comments in response to the Commission's Notice of Proposed Rulemaking, MM Docket Nos. 94-149 and 91-140 (released January 12, 1995) (hereinafter "NPRM") concerning minority and female ownership of mass media facilities.

INTRODUCTION

SKC, through various subsidiaries, owns and operates 11 full-power, full-service, UHF television stations and one full-power, UHF television satellite station. These stations all currently broadcast Home Shopping Club programming. In addition, SKC's stations devote more airtime to local and public interest programming than most independent UHF television stations in their markets.¹ Also, through various subsidiaries, SKC has lending and/or equity relationships with

¹ Home Shopping Station Issues, Report and Order in MM Docket No. 93-8, rel. July 19, 1993 at Para. 30. As Commissioner Quello wrote in his Separate Statement:

I will not repeat the discussion contained in the *Report and Order* regarding the extent

minority broadcasters who control six operating broadcast television stations with a seventh station under construction.

In its NPRM, the Commission seeks comment on minority incubator programs, its attribution rules as they relate to minority ownership, and minority tax certificates. In its Comments, SKC will address the establishment of a policy governing minority incubator programs and the Commission's attribution rules as they relate to minorities² based upon its "real-world" experience and active participation in fostering greater minority involvement (*i.e.*, ownership) in the television broadcast industry.³

BACKGROUND

SKC and its former parent, Home Shopping Network, Inc. ("HSN"), have done more than any other single broadcast owner to further minority television station ownership. Prior to December 28, 1992, when SKC was spun off from HSN and became a separate standalone company, HSN and its then-subsidiary SKC worked in concert on these ventures, typically (but not always) with SKC or one of its subsidiaries acquiring equity, and providing loan proceeds and technical and local programming expertise, and HSN's programming subsidiary, Home Shopping Club, Inc. ("HSC"), providing "network" programming. Accordingly, the combined role of HSN and SKC is implicit in

to which home shopping stations devote time to traditional public service programs. But quite frankly, I was surprised at the extent to which this is true. In addition to the formal comments submitted for the record, the Commission was flooded with correspondence attesting to the community service provided by these stations.

² Congress has rendered discussion on the Commission's minority tax certificate policy moot by repealing the agency's authority to grant minority tax certificates.

³ SKC's Comments focus on minority ownership of mass media facilities because this is where SKC has longstanding experience and expertise. However, SKC believes both its experience and the logic of its arguments apply with equal force to female ownership of mass media facilities.

all discussions of these ventures which commenced prior to December 28, 1992. However, as is also evident from SKC's Comments herein, SKC has continued to pursue these ventures with equal vigor -- most notably in the form of expanding its relationship with Blackstar Communications, Inc. and in investing in a Denver, Colorado station under construction -- since becoming a separate standalone company.⁴

Beginning in 1986, when it acquired its first station, SKC resolved to make affirmative efforts to expand the pool of minority-owned television stations, not only because it was a wise business investment, but also because it was the right thing to do. Since that time, SKC has funded or initiated funding of the acquisition or construction of seven minority-owned television stations and HSC has furthered the development of others through its affiliation agreements with such stations.

Through a \$5 million capital investment, SKC enabled Blackstar Communications, Inc. ("Blackstar") to acquire three major market television stations: Station WBSF(TV), Channel 43, Melbourne (Orlando), Florida; Station WBSP-TV, Channel 22, Salem (Portland), Oregon; and Station WBSX(TV), Channel 31, Ann Arbor (Detroit), Michigan. Blackstar is now one of the largest minority-controlled group station owners in the country. SKC, through a subsidiary, owns a 45% nonvoting common stock interest and 100% of the issued and outstanding preferred stock in Blackstar.

On November 5, 1993, an SKC subsidiary loaned Blackstar bridge financing of \$2.3 million that allowed Blackstar to retire its indebtedness to the Federal Depositary Insurance Corporation and restructure its preferred stock dividend obligations to SKC's subsidiary. Blackstar was subsequently

⁴ SKC's continued commitment to minority investment is particularly noteworthy in light of the fact that it was previously part of a company (HSN) with annual sales of approximately \$1.1 billion and today, as a standalone company, SKC has sales of approximately \$46 million annually.

able to refinance this bridge loan and these transactions ultimately made possible the formation of Blackstar L.L.C. described below.

On October 6, 1994, SKC, Blackstar management and Fox Television Stations, Inc. ("Fox") reached an agreement in principle to organize a new venture, Blackstar L.L.C., to acquire television stations in the United States which will affiliate with Fox. Blackstar's three existing stations will continue their affiliations with HSC. SKC and management of Blackstar intend to contribute their common stock in Blackstar to Blackstar L.L.C. The investments by Blackstar management and SKC will be supplemented by an investment in Blackstar L.L.C. by Fox and possibly other equity investors and by raising capital through various classes of debt. The Blackstar L.L.C. members believe that this venture (which has only become possible as a result of SKC's role in the formation of Blackstar and its provision to Blackstar of bridge financing), if successful, can become the preeminent minority-owned broadcast business in the United States.

Roberts Broadcasting Company ("RBC") applied for a construction permit for a new station on Channel 46 in East St. Louis, Illinois in 1981, and after a long comparative hearing was awarded the permit in 1987. The company, however, experienced difficulty in obtaining financing and faced surrender of the construction permit. In 1989, SKC provided a loan to RBC in excess of \$3.8 million to fund the construction and start-up operation of Station WHSL-TV, East St. Louis, Illinois. WHSL-TV commenced operations in September 1989 as the first new television station in the St. Louis market in 20 years. As the result of the participation of SKC, WHSL-TV has provided new jobs and opportunities for the St. Louis community. SKC, through a subsidiary, owns a 45% nonvoting common stock interest in RBC.

Jovon Broadcasting Corporation ("Jovon") was awarded a construction permit for Channel

62, Hammond, Indiana in 1986. Like RBC, however, it encountered severe difficulties in obtaining financing. In 1990, SKC loaned \$3.6 million to Jovon for the construction and start-up operation of Station WJYS(TV) (serving the Chicago market). That station began operations on March 3, 1991. The licensee's President and controlling shareholder has told the Senate, "WJYS-TV would not be on the air today....if Home Shopping Network had not financed and programmed the station." Today, WJYS(TV) is broadcasting as an independent station no longer affiliated with HSC. SKC, through a subsidiary, has an option to purchase a 45% nonvoting common stock interest in Jovon.

Also in 1990, SKC entered into an agreement with Urban Broadcasting Corporation ("Urban") to fund the construction and start-up operation of its new television station, WTMW(TV), Channel 14, Arlington, Virginia. SKC has committed over \$10.5 million dollars to this project and this new television station -- the first Black-owned commercial television station in the nation's capital -- commenced operations in August 1993. SKC, through a subsidiary, owns a 45% nonvoting common stock interest in Urban.

On August 26, 1994, an SKC subsidiary and Roberts Broadcasting Company of Denver ("RBCD") entered into a loan agreement and related agreements for the SKC subsidiary to loan RBCD \$3.7 million over time for RBCD's construction and start-up operation of Station KTVJ(TV), Channel 14, Boulder, Colorado. An SKC subsidiary owns a 45% nonvoting common stock interest in RBCD. The station, which is currently under construction, will serve the Denver, Colorado metropolitan area.

These stations' minority owners -- RBC, Jovon and Urban -- had been awarded construction permits after years of litigation, but were unable to obtain financing to build their stations. RBCD simply could not find financing anywhere else to support its acquisition of a station and/or permit to

construct a station in the Denver market. Without the financial, technical and other support of SKC and HSN, construction most certainly would not have begun and the minority-owned service these stations represent would not exist. Likewise, Blackstar would not have obtained the financing to acquire its three stations. Moreover, there would be no Blackstar L.L.C. which may one day rival in size the largest nonminority group owners. The television stations funded by SKC represent approximately one-third of the Black-owned commercial television stations in the country.

Moreover, HSC has entered into Television Affiliation Agreements with numerous other minority-controlled companies which enabled them either to complete station construction and begin operations or remain on the air.⁵ Among those companies are:

Racine Telecasting Company
Station WJJA-TV, Racine, Wisconsin

Ponce-Nicasio Broadcasting Ltd.
Station KCMY(TV), Sacramento, California

Pan Pacific Television, Inc.
Station KPST-TV, Vallejo, California

Fouce Amusement Enterprises, Inc.
Station KRCA-TV, Riverside, California

The importance of these minority-controlled stations was noted in a letter to Chairman Dingell, dated July 20, 1992, from Sharon McPhail, President of the National Bar Association:

These minority broadcasters provide their communities with programs that are produced locally and programs that address issues of interest to their minority audience: they are providing vital training and employment

⁵ As Carmen Ponce-Nicasio Briggs, President and owner of Ponce-Nicasio Broadcasting, Inc. stated to the Senate, "The FCC gave us 'life,' but HSN programming gave us the 'bread' to meet our daily operating expenses allowing us to retain ownership.....[HSN programming] was our economic salvation."

opportunities for minorities in the broadcast field.

MINORITY INCUBATOR PROGRAMS

I. PROGRAM ELIGIBILITY

SKC fully supports the creation of minority incubator programs to advance minority ownership of broadcast facilities.⁶ However, SKC believes the proposed qualifying standards are too strict and thus, if adopted as proposed, would become nothing more than a road paved with good intentions rarely, if ever, traveled.

Specifically, the Commission has proposed that “an acceptable incubator program must include, at a minimum, three elements: (1) substantial financial assistance (e.g., direct equity participation, loan guarantees or long-term low interest loans at, for example, one-half the market rate); (2) operational assistance (such as technical advice or assistance with station operations and management); and (3) training programs for new broadcasters and/or station personnel.” NPRM at 20. The Commission further states that its intention “is to establish a structure that is rigid enough to effectively assist minority and female owners and to guard against abuse, but flexible enough to let participants tailor their programs to accommodate their particular needs.” Id.

SKC fully agrees with the Commission’s intent in developing standards for the program. As noted above, SKC has done more than any other television group owner to facilitate minority ownership of television broadcast stations. Yet, even SKC would not have qualified under the Commission’s proposed incubator program standards. In the case of SKC, assistance was and is provided in the form of direct equity, market-adjusted and cost-of-capital-based loans, technical

⁶ While SKC’s experience relates solely to the broadcast television industry, SKC believes both its experience and the logic of its arguments apply with equal force to other broadcast services and nonbroadcast mass media services.

engineering and local programming support and/or "network" programming (provided by HSC) which only satisfies two of the three proposed category criteria. Thus requiring that all three categories be satisfied is unduly ambitious and rigid, and would limit the ability of mid-sized companies, such as SKC, to participate. If standards are adopted that are too demanding and insufficiently flexible, the program will ultimately fail in its objective of increasing minority ownership of mass media facilities. And despite SKC's pride in its role in increasing minority ownership over the past several years, SKC remains well aware of the hard cold facts: the level of minority ownership of mass media facilities is unacceptably low.

Unfortunately, in terms of the key barriers to entry, little has changed since SKC and HSN began their informal minority investment program in the mid-1980's. Financing remains as elusive as ever for new minority entrants into the broadcasting business. As Electronic Media reported as recently as this past January:

Traditional bank financing is hard to come by for media properties, minority media executives say, because bankers prefer loans on hard assets.

Add to that skittishness a minority entrepreneur who typically hasn't owned a media property before, and it becomes virtually impossible to get financing.⁷

It is thus clear, as has been SKC's experience, that a primary need in this area is the willingness of program participants to provide financing -- in other words, to provide, in effect, an alternative, unregulated bank/financing market willing to back deals that may be too small and/or too risky for commercial banks or investment banks.

SKC believes that additional flexibility can be added to the program without compromising

⁷ Electronic Media, "Minority media owners protest axing tax certificate incentive," January 30, 1995 at 2.

its integrity by allowing participation by companies that either satisfy two categories identified by the Commission or satisfy one category specifically identified by the Commission, but provide additional “other” assistance that the Commission, in its discretion, deems equally meritorious to the three specifically identified categories. Thus, under SKC’s proposal, participants will be required to satisfy two categories -- thereby ensuring that qualification requires real contributions that experience shows interested parties can meet without overextending themselves or compromising their obligations to their owners and/or shareholders, while permitting essential flexibility for methods of assistance that may be difficult to identify prospectively.

As to standards for the specifically identified categories, few would dispute that the most important contribution any party could make to fostering new or increased minority ownership is providing “substantial financial assistance.” SKC believes a potential program participant should qualify for credit under the “substantial financial assistance” category if it meets either one of the two following criteria:

1. The company has loaned the minority-controlled entity funds providing a minimum of 75% of the entity’s acquisition/construction requirements. Credit would, of course, be contingent on the commencement of broadcast operations. The Commission should not attempt to create a qualifying system that includes market rate interest criteria because it is both unworkable and immaterial.

As to materiality, if the minority-controlled/owned station commences operations, the program has accomplished its objective. The participating company, virtually by itself, has provided the necessary funding to put the minority-controlled station in business. Trying to determine how the loan should be structured would lead the Commission down a road that would be virtually impossible to navigate because the loans in question would not be traditional commercial loans from financial institutions -- loans, that in any event, are rarely available, or the program might not even be necessary. For example, SKC’s loans to minority broadcasters, which are a matter of record at the Commission, are far less restrictive than commercial bank loans and in most cases do not include construction period interest. For example, the loan to RBCD does not start accruing interest until station operations by KTVJ(TV), Boulder, Colorado commence. Moreover, these loan agreements do not include the same reporting obligations and covenant tests that traditional commercial bank

loans include. Thus these loans are not without substantial risk. Yet, SKC, as a public company, does need an adequate return on its loan because SKC's stock is owned by the public. There is simply no workable way, nor is there any need, to establish a required market interest rate discount to reward a company for providing the financing that allows a new minority-owned station to begin serving the public.⁸

2. The company has invested in at least a 25% equity stake in the minority-controlled entity and provided loan guarantees with respect to at least 75% of the entity's acquisition/construction requirements. Again, credit would, of course, be contingent on the commencement of broadcast operations. The rationale is similar to the first criterion. However, in this case the participating company is accepting the risk while not putting up the acquisition/construction funds. Therefore, to receive credit, the participating company is required to invest in a significant ownership stake in the minority-controlled company.

By its nature, "operational assistance" whether it be technical, program or management assistance, which also is vital to new entrants to the field, cannot be quantifiably defined and would have to be evaluated on a case-by-case basis. SKC believes, however, that the primary considerations should be whether the qualifying company designates specific highly-qualified individuals to work with the minority owner on the project and makes those individuals readily available to assist at all stages until the commencement of broadcast operations.

As to training programs, like operational assistance, SKC believes the Commission needs the flexibility to evaluate the qualifying merits of such programs on a case-by-case basis. However, unlike operational assistance, a training program should have some structure, whether formal or informal, so that the Commission is in a position to determine whether it qualifies.

In the cases of both the operational assistance and training program categories, the minority-owned company and/or qualifying company should be required to make an affirmative case to the Commission to qualify for credit in the relevant category. The parties should be permitted to present

⁸ This would be a difficult task -- making the "apples and oranges" comparison between commercial bank loans and program loans of infinite variety -- even for a government agency specifically charged with overseeing financial markets and matters.

their operational assistance and/or training program, or “other,” proposal to the Commission in advance so they will know whether the minority incubator program qualification standards will be satisfied.⁹

Finally, SKC believes companies should qualify for the incubator program designation through adoption of a single formal program or on a project-by-project basis to allow mid-sized and smaller companies who are unable to establish a formal separate incubator program the ability to participate in the program. While SKC has a fundamental, time-tested approach it brings to these investments, it is subject to both major and minor “tinkering” when a particular opportunity arises. Moreover, mid-sized and smaller companies do not possess the excess resources to set aside on a “permanent” basis for such a program, but must marshal their resources when opportunities arise. Experience has shown that with creativity and flexibility, mid-sized companies such as SKC can do as much as larger more bureaucratic companies to contribute to the fostering of increased minority ownership of mass media facilities.

II. PROGRAM INCENTIVES

The Commission asks for comment on several issues concerning program participation incentives. NPRM at 22-24. SKC believes that permitting increased ownership of stations is an adequate incentive to facilitate participation by nonminorities in the minority incubator program. Moreover, to protect the integrity of the program, any station facilitated by the minority incubator program should be subject to a one-year holding period to deter abuse.

SKC proposes that each time a qualifying station goes on the air, the supporting company

⁹ This “preapproval process” would not be necessary in the case of “substantial financial assistance” that clearly satisfies one of the two objective criteria in that category previously described herein.

should have the right to purchase an additional station of the same nature (i.e., an AM radio, FM radio, UHF TV or VHF TV station no more than five ADI markets above (i.e., larger) that of the facilitated station) without it counting against the station for national ownership limitation purposes. Accordingly, if a qualifying UHF TV station commences broadcasting in ADI market 17, the supporting company would be permitted to acquire an attributable interest in a UHF station in markets 12 or lower without that station counting against it under the national ownership limitations. In addition, however, the company should have the right to designate a pre-owned station as its “matching” station not subject to the national ownership limits. This flexibility is needed because stations are not fungible mass-produced commodities and it would be extremely difficult, if not impossible in some cases, to pick among limited markets and acquire a station at an economically sensible price, particularly when prospective sellers may be aware of the buyer’s restrictions.

SKC further believes that there should be no limit on the “matching” of stations not subject to the national ownership limits for two reasons: (1) such a limit would run counter to the objective of increasing minority ownership of mass media facilities by eliminating a company’s incentive for continuing the program once the limit was reached; and (2) such ownership may enhance local service to the communities in which the group owner is able to acquire additional stations.¹⁰

The 1991 FCC Office of Plans and Policy Staff Working Paper entitled “Broadcast Television in a Multichannel Marketplace”¹¹ examined the then-current state of the video marketplace and likely video landscape at the close of the century based upon an analysis of then-current trends. The OPP

¹⁰ This result is more fully discussed in SKC’s Comments in the Commission’s Television Ownership rulemaking proceeding.

¹¹ Office of Plans and Policy Working Paper #26. Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd. 3996 (1991) (hereinafter “OPP Paper”).

Paper documented what has become apparent to virtually all observers of the video marketplace, that television broadcasters are struggling while multichannel video providers are prospering in a video industry characterized by outmoded regulations that are predicated on a video marketplace dominated by television broadcasters that no longer exists.

Thus the Office of Plans and Policy concluded:

In today's market, for instance, common ownership of larger numbers of broadcast stations nationwide, or of more than one station in a market, may permit exploitation of economies of scale and reduce costs or permit improved service. Joint newsgathering operations, for instance, might permit improvements in the quality of local news coverage. For these reasons, the Commission should eliminate its broadcast multiple ownership rules, relax the duopoly rules to permit common ownership of television stations unless their grade A contours overlap, and consider eliminating the duopoly rules for unaffiliated UHF stations.¹²

While many broadcasters' fortunes have improved in the past year, the long-term future of broadcasting remains burdened by outmoded structural regulations which remain in place while broadcasters' multichannel competitors are not similarly restricted either on a national basis or in local markets.¹³

Accordingly, SKC supports the Office of Plans and Policy's recommendation that the Commission eliminate the duopoly rules for unaffiliated UHF stations.¹⁴ However, as more fully explained in its Comments in the Commission's Television Ownership rulemaking proceeding, SKC believes the duopoly rules should be deleted entirely, or at least in the first 50 television markets, or

¹² Id. at 170.

¹³ While the Commission has adopted rules limiting the permissible national reach of cable systems attributable to operators, these rules have been stayed by the courts.

¹⁴ SKC proposes that for purposes of identifying unaffiliated UHF stations the Commission apply the definition of a television network set out in Section 73.662(f) of its rules.

with respect to VHF/UHF combinations or UHF/UHF combinations, and the cross-interest policy should be abolished with respect to nonattributable equity interests or, at a minimum, only apply outside the top 50 markets. Inasmuch as SKC believes the duopoly rules and cross-interest policy should be substantially relaxed or abolished entirely because concerns over negative effects of undue local concentration are no longer valid, particularly in larger markets, SKC believes broadcasters participating in the minority incubator program should be permitted to exceed the local market ownership restrictions as well as the national ownership limits. See NPRM at 24.

SKC further believes that there should be no limit on the number of markets in which the “matching” of stations is not subject to the local ownership limits because such ownership may enhance local service to the communities in which the group owner is able to acquire additional stations.¹⁵ However, to the extent the Commission retains its duopoly rules, SKC does believe that the qualifying company should be permitted to exceed the local ownership limits by only one station per market.

Equitable considerations demand that companies which have undertaken efforts in the past that would have qualified for minority incubator program credit be given the opportunity to demonstrate that this is indeed the case and, if successful, be awarded the benefits provided by the minority incubator program. There is no equitable basis for discriminating against such companies as compared to other companies which subsequently qualify for benefits under the minority incubator program.

¹⁵ This result is more fully discussed in SKC’s Comments in the Commission’s Television Ownership rulemaking.

ATTRIBUTION

The linkage between (non)attribution and minority ownership is vital to any regulatory regime or program designed to increase minority ownership of mass media facilities if group owners are to be able to participate in any meaningful way consistent with their obligations to their owners and/or shareholders. Thus, in its NPRM, the Commission proposes a relaxation of its attribution standards to permit the nonattribution of all other interests when a minority entity owns 50% of the voting stock of a licensee and at least 15% of the entity's equity. NPRM at 26. SKC wholeheartedly supports this proposal and further believes that this new rule should apply retroactively.¹⁶ Fundamental fairness demands that companies which have undertaken such efforts without this carrot before them, should not be discriminated against vis-a-vis companies which subsequently assist minority entrepreneurs motivated in part by these new regulatory incentives.¹⁷ SKC further believes that there should be no limit on nonattributable interests for two reasons: (1) such a limit would run counter to the objective of increasing minority ownership of mass media facilities by discouraging voting stock and equity investment which may be required by a company before it would make a loan to a minority that is necessary to acquire or build a broadcast facility; and (2) an interest is deemed nonattributable because it is a passive investment and thus it does not matter how many such interests

¹⁶ In adopting this proposal, the Commission should also eliminate its cross-interest policy otherwise such nonattribution will be limited in impact to the national ownership cap (*i.e.*, whether or not the interest is attributable, the existing cross-interest policy may foreclose an entity from holding this interest in a market where it already holds an attributable interest).

¹⁷ Moreover, because (non)attribution reflects the Commission's determination (*i.e.*, its current expert judgment) as to whether a station should be counted for attribution purposes, it would defy all common sense and logic to count a station simply because it was acquired prior to relaxation of the standard when the Commission now believes there is no basis for attribution.

a party holds (which is why the Commission has never limited them before).¹⁸

The Commission also seeks comment on issues regarding “control” and, in particular, cases where the “control block” is not held by a single minority owner. NPRM at 27. SKC’s experience demonstrates that to a large degree concerns over “passive” investor “control” of broadcast licensees -- where the entity’s corporate structure is not a “sham” -- are misplaced. Protection is afforded both by the independent nature of these minority entrepreneurs and by the Commission’s rules and policies.

For example, SKC is currently involved in a dispute with Urban concerning loan payments under the parties’ loan agreement. Accordingly, this dispute is currently the subject of litigation notwithstanding the operational assistance SKC provided to Urban in launching WTMW(TV) and SKC’s subsidiary’s 45% nonvoting common stock interest in Urban. It bears noting that this dispute has had no impact on the continuing commitment of SKC and its minority partners to their existing minority ventures nor to SKC’s pursuit of expanding its business with its existing partners and its seeking new investments.

SKC also is currently engaged in discussions with Jovon concerning the exercise of its subsidiary’s option to acquire a 45% nonvoting common stock interest in Jovon. Again, notwithstanding SKC’s subsidiary’s position as Jovon’s lender, the parties have been unable to reach accord on exercise of the option due to uncertainty over the applicability of the Commission’s cross-interest policy.

Therefore, traditional policies and case law should apply to measuring influence and control (i.e., focusing on personnel, finances and programming) with, as the Commission proposes, inclusion

¹⁸ In its Comments in the Commission’s Attribution rulemaking proceeding, SKC addresses the one exception to this statement and argues that the cross-interest policy should be abolished with respect to nonattributable equity interests or, at a minimum, only apply outside the top 50 markets.

of a certification by participating nonminority investors similar to the limited partnership certification required with regard to limited partners' noninterference in day-to-day station operations.

CONCLUSION

It is a fact of regulatory life that commenting parties in rulemaking proceedings, be they private parties or public interest groups from the "left" or the "right," will advocate their self-interest supported with theory and logic whether or not they have any facts or other evidence to substantiate their positions. Like all commenting parties, SKC is motivated -- indeed has an obligation to its public shareholders to be motivated -- by company interests in advancing its proposals. However, in this proceeding SKC has a unique role to play. It has had its own longstanding "minority incubator program" and has years of direct experience in trying to make its informal program work for everyone involved. It is indisputable that, while imperfect, the HSN/SKC program has worked, and that more still needs to be done: everything else is conjecture.

Drawing upon its experience and the need for greater assistance in breaking down the barriers to minority inroads into ownership of mass media facilities, SKC has made proposals that not only will benefit SKC, but will benefit any other company interested in advancing its own interests while also advancing the laudable societal goals sought by the Commission. This is the only way such programs can succeed. SKC respectfully requests that its proposals be seriously considered and adopted because first and foremost they will provide the necessary incentives -- and of crucial importance, qualification is within the grasp of enough companies which may wish to participate -- to have a real impact on minority ownership of mass media facilities that exceeds the noble, but largely unsuccessful, efforts of the past.

Respectfully submitted,

SILVER KING COMMUNICATIONS, INC.

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